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SIPDIS

DEPARTMENT FOR S/WCI - SCHEFFER/WARRICK, S/SA -O'BRIEN, DRL
- KOH/BARKIN, L - MATHESON, L/EUR - LAHNE, INR/WCAD -
DONAHUE/MORIN, EUR/SCE - COUNTRYMAN

E.O. 12958: N/A

TAGS: [PREL](#) [PHUM](#) [BK](#) [HR](#) [SR](#) [NL](#) [ICTY](#)

SUBJECT: ICTY: REQUEST FOR GUIDANCE ON PROPER DISPOSITION
OF VAT REFUND

REF: 98 THE HAGUE 3665

[11](#). SUMMARY AND ACTION REQUEST: This is an action request; see paragraph five below. The Finance Section of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has recently renewed its 1998 request for advice as to the proper disposition to be made of a refund (in the amount of NLG 190,165) from the Dutch tax authorities of value-added tax (VAT) paid on goods and services purchased with USG funds and donated to the ICTY. Embassy requests guidance. END SUMMARY.

[12](#). In 1994, the USG proposed a donation in kind of a computer system -- computer hardware and software and all necessary support, including installation, maintenance, and training -- for the Office of the Prosecutor (OTP) of the ICTY. In 1995, the USG DOJ used a contract with CACI International Inc., a U.S. corporation, to purchase computer goods and services. CACI, in turn, subcontracted with Borsu Systema, a Dutch corporation, to provide some of those goods and services in The Netherlands. The goods and services were then contributed by the USG to the ICTY pursuant to the 1994 proposal of an in-kind donation of a computer system.

[13](#). Borsu Systema, the aforementioned Dutch subcontractor, charged VAT for the goods and services it provided. As a consequence, since 1996, the Embassy has been engaged in efforts to recover the VAT paid on those goods and services. In 1998, the Finance Section of the ICTY notified the Embassy that the Dutch Government had deposited into the ICTY's bank account a VAT refund (in the amount of NLG 190,165) for VAT that had been paid on goods and services purchased with USG funds and donated to the ICTY. The ICTY asked whether the USG agreed to the money being deposited in the ICTY's account. Per refTel, Embassy sought guidance as to whether the refunded VAT could be retained by the ICTY. Embassy also requested guidance as to whether there were any legal or other constraints that would restrict the purposes for which the funds could be used.

[14](#). On 18 May 2000, Embassy received a letter from the Finance Section of the ICTY, renewing its request for advice as to whether the Tribunal could keep the refunded VAT in the amount of NLG 190,165, or whether it must pay it back to the USG.

[15](#). ACTION REQUEST: Embassy seeks guidance as to whether the refunded VAT may be retained by the ICTY. If the ICTY may retain the funds, please advise whether there are any legal or other constraints that would restrict the purposes for which the funds could be used. Finally, if ICTY may not retain the funds, please provide instructions for the ICTY to transfer the funds back to the USG.

[16](#). A copy of the ICTY letter to the Embassy has been faxed to the Department (S/WCI - Warrick).
SCHNEIDER